

## 21 C.J.S. Courts § 329

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### Courts

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### X. Clerks of Courts

#### A. Nature of Office, Appointment, Qualification, and Tenure

## § 329. Resignation, suspension, and removal

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  8

**A clerk of court has the same right to resign as other public officers have, and the suspension or removal of the clerk is usually regulated by constitution or by statute.**

A clerk of court has the same right to resign as other public officers have, and this right is not affected by the fact that charges are pending against the clerk.<sup>1</sup> Where a court clerk resigns the office, the clerk may not be reappointed unless some other person has intervened as clerk by bona fide appointment.<sup>2</sup>

Usually, the power of suspension or removal of a court clerk is regulated by constitution or by statute.<sup>3</sup> A constitutional provision empowering the governor to suspend from office a "public officer" applies to a court clerk.<sup>4</sup>

A court clerk's unconditional and indefinite suspension without pay constitutes a "discharge" within the meaning of a law providing that the court clerk can only be discharged upon the advice and consent of justices.<sup>5</sup>

Where there is no evidence of a suspension or reduction in salary or benefits, the transfer of the clerk of a magistrate court to a position as a deputy clerk under the auspices of the clerk of a higher court is not, in and of itself, evidence of a demotion or other adverse action implicating county personnel policies.<sup>6</sup>

### ***Grounds for removal.***

Where express provision is made for the removal of court clerks, the power of removal can be exercised for no causes other than those specified.<sup>7</sup> A statute authorizing the removal of a court clerk where the "public good so requires" is not impermissibly vague<sup>8</sup> although the standard for removing a clerk from office under such a statute is broad.<sup>9</sup> The phrase "any offense involving moral turpitude" contained in a constitutional provision describing the grounds for which a court clerk may be removed from office is not, by its terms, restricted to statutory offenses, and thus, it also includes offenses at common law.<sup>10</sup> Some jurisdictions hold that court clerks may be fired for political reasons if they are responsible for public policy decisions.<sup>11</sup> A clerk may also be removed for violation of a state's ethical rules regarding court clerks and magistrates, including conduct such as habitual intemperance and mistreatment of court personnel.<sup>12</sup>

### ***Proceedings for removal.***

Statutory provisions may expressly authorize judges to remove their clerks of court by summary proceedings.<sup>13</sup> However, it has also been held that removal must be on notice,<sup>14</sup> with an opportunity to be heard, and after a trial on charges.<sup>15</sup> A clerk's failure to request an administrative hearing into his or her termination will not be excused on futility grounds although the clerk contends that a hearing would be futile given that the administrative director of the state court system would ultimately decide against the clerk.<sup>16</sup>

## **CUMULATIVE SUPPLEMENT**

### **Cases:**

Court clerk-magistrate's position as investigator and adjudicator of assistant clerk-magistrate's disciplinary violation did not violate due process in proceedings to terminate assistant's employment. *U.S. Const. Amend. 14*; *Mass. Const. pt. 1, art. 10*; *Mass. Gen. Laws Ann. ch. 211B, § 8*. *Perullo v. Advisory Committee on Personnel Standards*, 476 Mass. 829, 72 N.E.3d 1048 (2017).

Superior court judge who removed county clerk of court from her position lacked authority to remove clerk for mere misconduct, under section of state constitution providing for removal of clerks for misconduct, although senior regular resident superior court judge had been ordered to recuse himself due to ethical conflict; constitution conferred only senior regular resident superior court judge the authority to remove clerk, and since constitution did not confer subject-matter jurisdiction on anyone else to consider clerk's removal for misconduct, the rule of necessity applied to permit senior regular resident superior court judge to hear matter, as his disqualification resulted in denial of a clerk's constitutional right to have question properly presented to court. *N.C. Const. art. 4, § 17(4)*. *Matter of Chastain*, 2022 -NCCOA- 54, 869 S.E.2d 738 (N.C. Ct. App. 2022).

## **[END OF SUPPLEMENT]**

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### Footnotes

- 1 Tenn.—*In re Appointment of Clerk and Master for Sevier County*, 670 S.W.2d 215 (Tenn. 1984).
  - 2 Tenn.—*In re Appointment of Clerk and Master for Sevier County*, 670 S.W.2d 215 (Tenn. 1984).
  - 3 Fla.—*Bruner v. State Commission on Ethics*, 384 So. 2d 1339 (Fla. 1st DCA 1980).
- Mass.—*Campatelli v. Chief Justice of Trial Court*, 468 Mass. 455, 11 N.E.3d 115 (2014); *In re Antonelli*, 429 Mass. 644, 711 N.E.2d 104 (1999).

N.Y.—*Reno v. Van Voris*, 230 A.D.2d 296, 657 N.Y.S.2d 526 (3d Dep't 1997).

4 Fla.—*Bruner v. State Commission on Ethics*, 384 So. 2d 1339 (Fla. 1st DCA 1980).

5 N.Y.—*Reno v. Van Voris*, 230 A.D.2d 296, 657 N.Y.S.2d 526 (3d Dep't 1997).

6 Ga.—*Jennings v. McIntosh County Bd. of Com'rs*, 276 Ga. 842, 583 S.E.2d 839 (2003).

7 Mo.—*State ex rel. Henson v. Sheppard*, 192 Mo. 497, 91 S.W. 477 (1905).

8 Mass.—*In re Antonelli*, 429 Mass. 644, 711 N.E.2d 104 (1999).

9 Mass.—*State Board of Retirement v. Bulger*, 446 Mass. 169, 843 N.E.2d 603 (2006).

10 Ala.—*Lewis v. State ex rel. Evans*, 387 So. 2d 795 (Ala. 1980).

11 N.C.—*Sims-Campbell v. Welch*, 769 S.E.2d 643 (N.C. Ct. App. 2015); *Carter v. Marion*, 183 N.C. App. 449, 645 S.E.2d 129 (2007).

**Discharge of employees who are not responsible for public policy decisions.**

A court clerk may not be discharged for refusal to engage in political activity if their job duties do not include policymaking.

U.S.—*Morin v. Tormey*, 626 F.3d 40 (2d Cir. 2010); *Calvert v. Hicks*, 510 F. Supp. 2d 1164 (N.D. Ga. 2007).

12 Mass.—*In re Powers*, 465 Mass. 63, 987 N.E.2d 569 (2013).

13 Mass.—*In re Antonelli*, 429 Mass. 644, 711 N.E.2d 104 (1999).

Tenn.—*Goddard v. Sevier County*, 623 S.W.2d 917 (Tenn. 1981).

**No private right of action for discipline of clerk**

A private citizen has no right of action to seek disciplinary proceedings against a court clerk.

Mass.—*Gorbatova v. First Assistant Clerk of Supreme Judicial Court for County of Suffolk*, 463 Mass. 1019, 979 N.E.2d 208 (2012).

14 N.C.—*Stephens v. Dowell*, 208 N.C. 555, 181 S.E. 629 (1935).

15 N.Y.—*In re Theofel*, 143 Misc. 666, 258 N.Y.S. 61 (Sur. Ct. 1932).

**Review of disciplinary findings**

The appellate court will generally defer to the findings of the hearing officer regarding the credibility of the evidence in disciplinary proceedings against court clerk.

Mass.—*In re Powers*, 465 Mass. 63, 987 N.E.2d 569 (2013).

16 Alaska—*Voigt v. Snowden*, 923 P.2d 778 (Alaska 1996).